

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NANCY A. QUANDT)	
Claimant)	
)	
VS.)	
)	
TYSON FRESH MEATS, INC.)	
Self-Insured Respondent)	Docket No. 184,591
)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requests review of the December 8, 2010, Post Award Medical Order entered by Administrative Law Judge (ALJ) Brad E. Avery. The appeal has been placed on the Board's summary docket for disposition without oral argument. Workers Compensation's Acting Director appointed Thomas D. Arnhold of Hutchinson, Kansas, to serve as Board Member Pro Tem in place of Carol Foreman, who retired in September 2010.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for the self-insured respondent. Derek R. Chappell of Ottawa, Kansas, appeared for the Workers Compensation Fund (Fund).

RECORD AND STIPULATIONS

The record in this post-award proceeding includes: (1) the transcript from the Post Award Hearing held on February 20, 2009; (2) the transcript from the Post Award hearing held on December 4, 2009; (3) the deposition of Dr. Albert Halls taken March 8, 2010; and, (4) the deposition of Dr. Eli S. Chesen taken April 6, 2010.

ISSUES

This is a post-award request for dental treatment, including dental implants or other appropriate treatment to replace her teeth. Claimant alleges she needs dental implants

due to the loss of teeth that she attributes to the long-term use of narcotic pain medications she alleges she has taken to relieve the effects of her March 1993 work-related injury and resulting 19 surgeries. In the December 8, 2010 Post Award Medical Order, the ALJ denied claimant's request for dental treatment after finding that neither physician who testified in this post-award matter was capable of rendering a competent opinion regarding the relationship of the requested dental treatment to the work injury. The ALJ stated, in part:

Two doctors, Halls and Chesen, issued opinions regarding claimant's need for dental care. Dr. Halls is a family doctor and Dr. Chesen is a psychiatrist. The Court has concluded neither physician was capable of rendering a competent opinion regarding what, if any, dental care was required by the claimant in relation to her accidental injury. There is no indication either doctor examined the claimant's mouth before testifying.

Dr. Chesen said claimant's teeth were falling out because she had bulimorexia, an eating disorder, smoked tobacco and had chronic malnutrition. The doctor's observations may or may not be true. However, he failed to identify his basis for believing the claimant had either condition, other than his assertion the claimant acknowledged "a history of such a disorder or symptoms (to him)" and the fact that he looked at the claimant while talking with her and thought she was "extremely thin." Claimant's eating habits and smoking habits were not detailed by the doctor and there was no apparent basis to conclude his observations were accurate.

Dr. Halls, who at least had treated the claimant, said long term use of narcotics can lead to drying of the mouth and result in the loss of teeth. However, there is no evidence in the record to establish the claimant's mouth is dryer than normal and that such was the cause of her dental problems. The Court finds neither explanation credible in view of the lack of actual knowledge of either physician.¹

Accordingly, the ALJ determined claimant had failed to satisfy her burden of proof.

Claimant disputes the ALJ's findings. She asserts that she first underwent a neck fusion in October 1993, followed by another 18 surgeries, and that she has taken narcotic pain medications for at least 12 years. She maintains that in December 2007 her teeth began crumbling and falling out, which she attributes to a dry mouth from those narcotics. She also maintains the Board should adopt the opinions of her medical expert, Dr. Albert Halls, as he has treated her since May 2008 and he has experience treating patients who have been taking narcotics long term. And Dr. Halls believes claimant's long-term narcotic

¹ ALJ PAM Order (Dec. 8, 2010) at 1-2.

use resulted in a lack of bacteria and saliva, which caused periodontal disease and loss of teeth.

In addition, claimant challenges the testimony of respondent's expert, psychiatrist Dr. Eli Chesen, and argues the psychiatrist is a much-used defense witness as indicated by the cases reported by the Iowa Commission of Workers Compensation. Claimant asserts that the doctor testified on behalf of the employer in all ten of the most recent cases reported by that commission in which the doctor testified and, furthermore, that the doctor in all ten cases either opined that the worker had no psychiatric impairment or condition or that the worker's psychiatric condition was not related to the work injury. Moreover, claimant maintains that although Dr. Chesen reviewed very few of claimant's medical records and saw claimant on only one occasion, he was comfortable stating that claimant did not have any pain from her work injury or the resulting 19 surgeries. In short, claimant challenges Dr. Chesen's opinion the March 1993 injury was inconsequential and claimant's symptoms should have lasted no more than two to three weeks and that she underwent the numerous surgeries in her quest to obtain narcotics.

In conclusion, claimant requests the Board to reverse the December 8, 2010 Order and authorize the dental implants as being necessary to relieve the long-term effects of her March 1993 injury.

Respondent argues the ALJ's Award should be affirmed. Respondent challenges Dr. Halls' testimony on the basis that he has no formal training in dentistry; he did not know how long claimant has taken narcotics; he had no knowledge of how claimant cared for her teeth over the years; he did not review any of claimant's dental records; he had other patients who had significant dental problems but who had not taken narcotics for very long; claimant gave him the idea that her dental problems were related to narcotics; and that the doctor acknowledged claimant's long-term smoking habit could have caused her dental problems.

Conversely, respondent emphasizes that its medical expert, Dr. Chesen, is a very reputable, experienced, board-certified psychiatrist who is a former president of the Nebraska Psychiatric Society; former chief of psychiatry at the Bryan Lincoln General Hospital Medical Center; and former examiner for the American Board of Psychiatry and Neurology; and whose practice is almost entirely diagnosing and treating patients with psychological and psychiatric problems. And although Dr. Chesen diagnosed claimant as having several psychological disorders, the doctor found none related to her March 1993 work injury. Respondent maintains the Board should adopt Dr. Chesen's opinion that claimant's dental problems are not related to her work injury but, instead, to malnutrition, an eating disorder, and a 40-year smoking habit.

The Fund adopts the arguments set forth by respondent.

The only issue before the Board on this appeal is whether claimant has established that her present dental problems are related to her March 1993 accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes the Post-Award Order should be affirmed.

The sole issue before the Board is whether claimant's present need for dental implants is related to her work-related accident on March 26, 1993. Since that accident claimant has undergone at least six surgeries on her spine and she estimates that she has taken narcotic medications for approximately 12 years.

In September 2007 claimant began losing teeth. She described the first instance as follows:

Q. (Mr. Lee) Now, what do you mean you were eating and your teeth just fell out, tell me what happened?

A. (Claimant) I was eating a hamburger and I felt something crunch and I spit it out and my cap on my tooth was there and then I looked at it and it just crumbled, the tooth that was underneath the cap --

Q. Okay.

A. -- it just crumbled. It was so dry and it just --

Q. Okay. And has that happened on more than one occasion?

A. Oh, yeah.²

According to claimant, before that incident her dental history was relatively normal.

After losing a second tooth, claimant sought treatment at the University of Nebraska Dental School where students extracted her upper teeth and approximately half of her lower teeth. In this post-award proceeding, claimant requests the appointment of a specialist for dental implants or other appropriate treatment.

Claimant was 62-years old when she testified at her post award hearing in February 2009. At that time claimant was receiving medical treatment from Dr. Massey, an

² P.A.H. Trans. (Feb. 20, 2009) at 10-11.

authorized physician, who was prescribing Dylox, Hydroxyzpam, and Lorazepam. She was also allegedly seeing a doctor who was both a neurologist and psychologist.

Claimant testified that before losing the tooth in September 2007 a number of her teeth had been capped years ago, but she does not recall why. She denied having cavities and specifically denied having any cavities during childhood. She also testified that she had smoked since being 21-years old, or more than 40 years, but that she had reduced her smoking to about a pack of cigarettes every 3 days. In addition, she acknowledged that over the last four or five years she has experienced anxiety for which she has taken medications.

Two doctors testified in this post-award request – Dr. Albert Halls and Dr. Eli Chesen. Claimant's medical expert witness, Dr. Albert Halls, is board certified in family practice and began treating claimant in 2008. Dr. Halls practices in a clinic for the indigent and treats people daily who have taken narcotics on a long-term basis. Dr. Halls testified that when claimant initially consulted him she wanted to stop taking the higher-concentration narcotics being prescribed by Dr. Massey and try the lower-concentration narcotics.

Dr. Halls reviewed a portion of claimant's medical records and understood that claimant had a long history of taking significant narcotic pain medications for her chronic pain symptoms, which he attributed to her present dental problems. Dr. Halls testified, in part:

Q. (Mr. Lee) All right. And do you have an opinion, Doctor, as to what effect this lady's long-term usage of narcotic medication has had on her teeth?

MR. WORTH: Objection, lack of foundation and speculation.

Q. (By Mr. Lee) You can answer.

A. (Dr. Halls) I believe, you know, anybody that takes chronic narcotics is going to have problems with dental problems because the narcotics dry out the mouth, they -- and eventually cause difficulty with their dentition and they lose their teeth because of the narcotics.

Q. Have you had other patients who have had long-term narcotic use like this lady has had going back well in excess of 20 years with dental problems?

A. Well, I don't know if I have anybody of her nature going 20 years on narcotics, but my patients with even less time than that have struggled with problems with teeth, you know, with their teeth, losing their teeth and inability to maintain -- losing

their teeth more quickly than they probably would have if they didn't have, you know, significant narcotic use.³

And in a letter dated November 30, 2009, Dr. Halls diagnosed claimant with chronic pain syndrome and stated, "Due to her long term use of pain medicines she has suffered problems with her teeth and that has caused her to lose her teeth and further require replacement dentures."

Dr. Halls explained that long-term narcotic users develop a dry mouth (xerostomia) and that the resulting lack of saliva and bacteria causes periodontal disease and tooth loss.⁴

On cross-examination, however, Dr. Halls admitted he had not reviewed any of claimant's dental records and that he did not have any knowledge of how she cared for her teeth. In addition, the doctor acknowledged that claimant's smoking was also a factor in teeth hygiene and the health of her teeth. Finally, Dr. Halls indicated that claimant questioned him about the relationship between her teeth and the use of narcotics, but that was after she had seen the dentists in the clinic who allegedly first made the connection.⁵

Respondent's expert witness, Dr. Eli S. Chesen, is board-certified in psychiatry, a former president of the Nebraska Psychiatric Society, formerly the chief of psychiatry at the Bryan Lincoln General Hospital Medical Center, formerly an oral examiner for the American Board of Psychiatry and Neurology, and an adjunct professor in the department of psychiatry for the University of Nebraska College of Medicine and Nursing. Dr. Chesen spends the majority of his time diagnosing and treating patients. But he spends a small percentage of his time performing forensic consultations, such as he did in this claim for respondent.

Dr. Chesen examined claimant in late October 2009, when psychological treatment was being requested in this post-award proceeding.⁶ Based upon his evaluation, the doctor diagnosed claimant with chronic post traumatic stress disorder (PTSD) and histrionic personality disorder, neither of which were related to claimant's injury at work. The doctor believed that claimant's injury at work was minor when compared to earlier

³ Halls Depo. at 11-12.

⁴ Ibid. at 31.

⁵ Ibid. at 33.

⁶ The ALJ stated on page one of the Post-Award Medical Order that claimant had initially sought psychological treatment and an independent medical examination had been scheduled but that claimant advised such treatment was no longer being pursued.

events in her life. In any event, Dr. Chesen concluded that claimant's psychiatric disorders were problematic but they did not really create any type of disability that could be documented or that appeared apparent.⁷

Moreover, Dr. Chesen concluded that claimant's dental problems were not caused by her long-term use of narcotics but, instead, due to her chronic state of malnutrition and an eating disorder with purging (bulimorexia). The doctor explained that purging regularly bathed the teeth in stomach acid, which erodes the teeth and smoking occludes the small blood vessels supplying the pulp. Plus, smoking irritates the gums, which leads to gum and dental disease. The doctor believes malnutrition has contributed to claimant's dental disease as the lack of vitamin C and other elements tends to lead to poor repair of teeth and dental decay.⁸

On cross-examination, claimant established that Dr. Chesen reviewed few of claimant's medical records. The doctor did not know how many surgeries claimant had undergone since her accident and he was not aware of the number of, or which, vertebrae had been fused in claimant's neck and back. Without reviewing any of the surgeon's records, Dr. Chesen was able to conclude that the surgeon was duped into operating on claimant, that a number of the surgeries were unnecessary, and that the surgeries were performed due to claimant's addiction to narcotics.

Moreover, claimant introduced excerpts from decisions issued by the Iowa Commission of Workers' Compensation in which that tribunal wrote that Dr. Chesen's conduct had "come very close to overt advocacy"⁹ for the defendant and in another case he had misstated the record.

Based upon the above evidence, the ALJ determined claimant had failed to satisfy her burden to prove that her dental problems were related to her accident at work. The Board agrees. In short, Dr. Chesen's testimony is suspect. Nevertheless, the Board is not persuaded by the testimony by Dr. Halls. When considering the entire record, the Board finds that there are multiple reasons why claimant may have lost her teeth besides long-term narcotics use; namely, her long-term smoking habit, nutritional habits and possible malnutrition, and purging her food (which was not refuted). Based on this record, the Board is not convinced claimant's dental problems are more likely than not due to her long-term use of narcotics than any of the other potential causes.

⁷ Chesen Depo. at 36.

⁸ Ibid. at 30-31.

⁹ Ibid. at 74.

In summary, the Board adopts the ALJ's conclusion that claimant has failed to carry her burden of proof; therefore, the Post-Award Medical Order should be affirmed.

AWARD

WHEREFORE, it is the decision of the Board that the Post-Award Medical Order of Administrative Law Judge Brad E. Avery dated December 8, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2011.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Gregory D. Worth, Attorney for Self-Insured Respondent
Derek R. Chappell, Attorney for Workers Compensation Fund
Brad E. Avery, Administrative Law Judge